

August 7, 1953

Attorney General

George W. Nelson  
Assistant Attorney General

Letter of Mr. East, Division of Personnel  
Commencement of a Deputy Forest Fire Warden who  
is also a Salary Classified Employee of the Tax  
Commission while Participating in Fire Fighting

NEW HAMPSHIRE LAW LIBRARY

SEP 03 1998

CONCORD, N.H.

Mr. Roy V. East, Director  
Division of Personnel  
State House

Dear Mr. East:

In reply to your memorandum of August 6, 1953, it is my understanding that your particular problem concerns a full time salaried classified employee of the Tax Commission who is also a deputy forest fire warden appointed in accordance with the provisions of Revised Laws, Chapter 233, Sections 14 and 15. Reply to your memorandum is therefore limited to that particular situation. Other problems, if they arise, may present factual situations of varying equities. It is only by applying the law to the particular set of facts that justice may be accomplished.

By the provisions of said Chapter 233, sections 20 and 21, as amended by Laws of 1949, Chapter 244, a deputy forest fire warden not only has the duty to extinguish all brush and forest fires occurring in the town, but may summon others into service to fight such fire under penalty of prosecution and fine for failure to respond to his summons. By section 22 of said chapter remuneration for services of such deputy wardens is set by the Forestry and Recreation Commission and the State Forester. In fighting fires, said deputy warden is a state employee.

The expenses of actually fighting forest and brush fires in towns, and other expenses incurred by deputy wardens of said towns in preventing forest fires are proportionally paid by the town and the state in accordance with the formula established by Revised Laws, Chapter 233, section 24 as amended by Laws of 1949, Chapter 92 and Laws of 1953, Chapter 187.

Rule IV, Section 3 of the Division of Personnel provides that when an employee is employed in more than one part-time position in the state classified service, he shall not receive more than the regular salary for the class of work to which he is assigned. The salary shall be prorated among the various agencies on the basis of time actually worked.

One summoned into service by the Deputy warden to fight a forest fire is required to do so upon penalty of conviction and fine for failure to so respond as above stated, regardless of his business or income from other sources. No reason is perceived why the same rule should not apply to the



C O P Y

August 7, 1953

page 2

deputy warden himself. The application of Rule IV should not bar the deputy warden from receiving for his services as such deputy warden the full compensation provided for these duties even though it may be in excess of that normally received for his regular classified employment by the State Tax Commission. If his compensation as such deputy warden while fighting wild fire is less than his normal compensation in his regular classified tax commission employment, he must accept that sum as his full compensation for the period during which he was absent from his tax commission employment. Such time absent to fight fires shall be considered as part-time employment as a deputy forest fire warden, not chargeable against his accrued annual leave on his regular classified job.

Very truly yours,

George F. Nelson  
Assistant Attorney General

C-10000